IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2670 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JASWANTGIRI N GOSAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2670 of 1997
MR MUKESH H RATHOD for Petitioner No. 1-3
MR KP RAVAL AGP for Respondent No. 1
MS NAYANA V PANCHAL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 30/07/2004

ORAL JUDGEMENT

1.0 The petitioners herein have challenged the inaction on the part of respondent no.2, whereby they were denied promotions to the Post of Talati-cum-Mantri in the respondent Panchayat in spite of the fact that vacancies were available and recommendations to that effect were also made by the District Panchayat.

2.0 The petitioners are Class IV employees working

with the respondent Panchayat. It is the case of the petitioners that as per the Recruitment Rules of the District Panchayat, a Class IV employee of the District Panchayat is eligible for promotion to the post of Class III i.e. Talati-cum-Mantri on his completing three years service on the Class IV post.

2.1 On the completion of three years service on the said post, the petitioners became eligible for promotion to the post of Class III i.e. Talati-cum-Mantri and being members of the backward classes, they were even entitled to accelerated chances of promotion in disregard to their position in the seniority list. Vide communication dated 15/05/90, respondent no.2 directed all the Taluka Development Officers to send a list of Class IV employees who were eligible for being promoted to the Class III post. To the aforesaid communication, the petitioners submitted their representations.

2.2 The Panchayat forwarded the Seniority List dated 02/02/93 to the Gujarat Panchayat Services Selection Board, enclosing a list of 10 Peons who were eligible to be promoted as Talati-cum-Mantri. The name of the present petitioners figured in this list at Sr.No.4, 7 and 10 respectively. But despite their names figuring in the Seniority list, no follow-up action was taken by the Panchayat, thereby compelling the petitioners to make several representations. By communication dated 19/05/94, it was stated that due to a decision to impose 10% cut on the set-up, the posts could not be filled. On 02/06/95 the respondent State Government by a Resolution resolved that the ban would not apply to promotions, Annexure `G' to the petition.

2.3 On the ban being lifted by the Government Resolution, the petitioners again made several representations but no heed was paid to the said representations by the respondent Panchayat. On being aggrieved by this, the petitioners have approached this Court by this petition.

3.0 The respondent Panchayat has appeared in the matter and has filed its reply but no reply has been filed by the State Government in spite of orders of this Court dated 20/06/04 and 12/07/04.

4.0 Mr.M H Rathod learned advocate for the petitioners has submitted that the petitioners are deprived of their promotion only on the ground of ban imposed by the State Government, otherwise, in view of the letter dated 21/04/93 issued by the District

Panchayat, Junagadh to the Chairman of the Gujarat Panchayat Services Selection Board, it is very clear that there were vacancies and that the petitioners were entitled to get promotion. Moreover, their names were also reflected at Sr.Nos.4, 7 & 10 in the Seniority List annexed to the letter. He has also submitted that the petitioners had made several representations but the same were turned down on the ground that since there was ban by the State Government to impose 10% cut on the set-up, they could not be granted promotion.

4.1 The said Government Resolution is of the year 1994 and even thereafter the petitioners were not promoted though they were qualified and their names were recommended by the District Panchayat for promotion to the post of Talati-cum-Mantri.

5.0 Mr.K P Raval learned AGP has submitted that in view of the Village Panchayat Secretary (Class III) (Panchayat Service) Recruitment Rules, 1998, the petitioners were not entitled for promotion because the only avenue open for promotion was through direct recruitment. Mr.Raval has also submitted that in view of the affidavit filed by the respondent Panchayat, the petitioners are not required to be promoted to the post of Talati-cum-Mantri.

6.0 I have considered the arguments of both the sides and the evidence on record. Prima facie, the stand taken by the respondent Panchayat is not in consonance with the policy of the State Government. The petitioners cannot be deprived of promotion on the ground that there was a ban by the State Government to keep 10% cut on the set up. Moreover, the petitioners are qualified employees and their case has also been recommended by the District Panchayat. In that view of the matter, I am of the opinion that the petitioners are entitled for promotion to the post of Class III i.e. Talati-cum-Mantri.

7.0 In the result, the petition is partly allowed. It is directed that the respondents shall consider the case of the petitioners for promotion to the post of Talati-cum-Mantri on the post of back log as on 25/11/93 at Annexure `E' to the petition. The said exercise should be completed within a period of three months from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no orders as to costs.

(K. S. Jhaveri, J.)

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